

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEMARCUS BURSE,

Petitioner,

vs.

JOE PONTE, *et al.*,

Respondents.

2:11-cv-00674-KJD-RJJ

ORDER

DeMarcus Burse, a prisoner at Nevada Southern Detention Center, has filed a *pro se* petition for writ of habeas corpus. Petitioner has paid the filing fee for this action (docket #5). The petition shall now be filed and served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Petitioner has also filed a motion for appointment of counsel (docket #2) and a motion that petitioner continue to be housed at Nevada Southern Detention Center until resolution of his writ of habeas corpus (docket #3).

1 There is no constitutional right to appointed counsel for a federal habeas corpus
2 proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th
3 Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191,
4 1196 (9th Cir. 1986); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir. 1984). However, counsel must
5 be appointed if the complexities of the case are such that denial of counsel would amount to a denial of
6 due process, and where the petitioner is a person of such limited education as to be incapable of fairly
7 presenting his claims. See *Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th
8 Cir. 1970).

9 Petitioner has filed a cursory, one-sentence motion for appointment of counsel (docket
10 #2). It does not appear that counsel is justified at this time. The motion shall be denied without
11 prejudice.

12 Similarly, petitioner's motion that he be housed at Nevada Southern Detention Center
13 until the resolution of the habeas petition (docket #3) is one sentence and fails to set forth any basis for
14 his request. Petitioner's motion shall be denied.

15 **IT IS THEREFORE ORDERED** that the Clerk shall **FILE and ELECTRONICALLY**
16 **SERVE** the petition (docket #1-1) upon Dan Bodgen, United States Attorney for the District of Nevada.

17 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from
18 entry of this order within which to answer, or otherwise respond to, the petition. In their answer or other
19 response, respondents shall address any claims presented by petitioner in his petition as well as any
20 claims presented by petitioner in any Statement of Additional Claims. Respondents shall raise all
21 potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and
22 procedural default. **Successive motions to dismiss will not be entertained.** If an answer is filed,
23 respondents shall comply with the requirements of Rule 5 of the Rules Governing Proceedings in the
24 United States District Courts under 28 U.S.C. §2255. If an answer is filed, petitioner shall have **forty-**
25 **five (45) days** from the date of service of the answer to file a reply.

1 **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the United
2 States Attorney at 333 Las Vegas Boulevard South, 5th Floor, Las Vegas, NV 89101, a copy of every
3 pleading, motion, or other document he submits for consideration by the court. Petitioner shall include
4 with the original paper submitted for filing a certificate stating the date that a true and correct copy of
5 the document was mailed to the United States Attorney. The court may disregard any paper that does
6 not include a certificate of service. After respondents appear in this action, petitioner shall make such
7 service upon the particular Assistant United States Attorney assigned to the case.

8 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel
9 (docket #2) is **DENIED** without prejudice.

10 **IT IS FURTHER ORDERED** that petitioner's motion that petitioner continue to be
11 housed at Nevada Southern Detention Center until resolution of his writ of habeas corpus (docket #3)
12 is **DENIED**.

13 DATED: June 8, 2011

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17 UNITED STATES DISTRICT JUDGE
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